

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)	
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IP-Enabled Services)	WC-04-36
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COMMENTS OF THE IOWA UTILITIES BOARD

Introduction

On March 10, 2004, the Federal Communications Commission (FCC) released a notice of proposed rulemaking in its *Review of Regulatory Requirements for IP-Enabled Services*, WC Docket No. 04-36. The FCC is seeking comments on issues relating to services and applications using Internet Protocol (IP), collectively referred to as 'IP-enabled services.' The Iowa Utilities Board respectfully submits the following comments.

Discussion

Technical Neutrality

The standards and regulation of telecommunications services should be technologically neutral, that is, based on the function served rather than the equipment or protocol used. Thus, if a service is sold as local exchange telecommunications service, it should be regulated (or unregulated) as such. If the service is sold as something else (computer-to-computer voice service, for example), it should be treated like other similar services. This will preserve and

enhance competitive neutrality in the regulation of companies using different technologies to provide similar services. The Telecommunications Act does not favor one technology over another, but instead contemplates regulatory action based on whether the provided service meets the definitions in the Telecommunications Act. *47 U.S.C. §153(46)*.

Technologies used to provide telecommunications services over the years may have changed the manner by which telecommunications is delivered, but they have not often changed the nature of the service. The transmission between or among points specified by the user of information of the user's choosing are without change in the form or content of the information as sent or received.

An IP-Enabled service that uses the Public Switched Telephone Network (PSTN) fits this definition and is a telecommunications service. Only the underlying technology has changed. The FCC has recently stated that AT&T's use of Voice over Internet Protocol (VoIP) remains a telecommunications service.¹ The FCC found that AT&T's IP offering is advertised to the public for a fee; the traffic interconnects with the PSTN; it uses numbers from the NANP; it uses protocol conversion to permit real-time, point-to-point transmission over the internet; and, it transmits customer information without a net change in the form or content of the information itself. These characteristics are all focused on the service provided rather than the technology used.

¹ Petition for Declaratory ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Docket No. WC-02-361.

Jurisdiction

The concept of “cooperative federalism” has been a central tenet of the dual regulatory scheme over telecommunications services set up by the Telecommunications Act. Congress has continued to uphold this concept through the many amendments to the Telecommunications Act.

In the recent 1996 amendment, Congress preserved the authority of the states by enacting the “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.” *47 U.S.C. §253(b)*. Congress also reinforced other states’ rights in *47 U.S.C. §§252(e)(3) and 251(d)(3)*. *47 USC § 252(e)(3)* authorizes a State commission, in its review of an interconnection agreement, to establish and to enforce “other requirements of State law[,] including compliance with intrastate telecommunications service quality standards or requirements.” *47 USC § 251(d)(3)* provides that the FCC shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of § 251; and, (C) does not substantially prevent implementation of the requirements of § 251 and the purposes of the Telecommunications Act of 1996. Thus, the states maintain authority over intrastate telecommunications services.

This authority reflects an obligation on the states to look at local service issues and a responsibility to satisfy public interest concerns. There would be an adverse impact to the consumer if VoIP providers are exempted from obligations derived from state and federal regulations. These obligations include:

- IP-enabled service providers should comply with the principles of the Communications Assistance for Law Enforcement Act (CALEA.)
- VoIP providers should have the same disability access requirements as all other telecommunications providers.
- Any service provider that uses the PSTN must compensate the appropriate carrier for the use of the network. There should be no free ride provided.
- IP-enabled service providers who use the PSTN should have the same obligations and benefits related to Universal Service as other service providers.
- IP-enabled service providers should be required to comply with E911 services.

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